

choose one of these options, its eligibility shall be terminated in accordance with the normal procedures for failure to cooperate with verification efforts. Collateral contacts could include employers, social service agencies, and migrant agencies.

(3) *Agency records.* Agency records to which the State agency or School Food Authority may have access are not considered collateral contacts. Information concerning income, household size, or food stamp, FDPIR, or TANF eligibility maintained by other government agencies to which the State agency, school food authority or school can legally gain access may be used to confirm a household's income, size, or receipt of benefits. One possible source could be wage and benefit information maintained by the State employment agency, if that information is available. The use of any information derived from other agencies must be used with the applicable safeguards concerning disclosure.

(c) *Verification reporting and record-keeping requirements.* No later than March 1, 2005 and by March 1st each year thereafter, each school food authority must report information related to its annual verification activity to the State agency in accordance with guidelines provided by FNS. These required data elements will be specified by FNS. Contingent upon new funding to support this purpose, FNS will also require each school food authority to collect and report the number of students who were terminated as a result of verification but who were reinstated as of February 15th. The first report containing this data element would be required in the school year beginning July 1, 2005 and each school year thereafter. State agencies may develop paper or electronic reporting forms to collect this data from school food authorities, as long as all required data elements are collected from each school food authority. School food authorities shall retain copies of the information reported under this section and all supporting documents for a minimum of 3 years. All verified applications must be readily retrievable on an individual school basis and include all documents submitted by the household for the purpose of confirming eli-

gibility, reproductions of those documents, or annotations made by the determining official which indicate which documents were submitted by the household and the date of submission. All relevant correspondence between the households selected for verification and the school or school food authority must be retained. School food authorities are encouraged to collect and report any or all verification data elements before the required dates.

(d) *Nondiscrimination.* The verification efforts shall be applied without regard to race, sex, color, national origin, age, or disability.

(e) *Adverse action.* If verification activities fail to confirm eligibility for free or reduced price benefits or should the household fail to cooperate with verification efforts, the school or School Food Authority shall reduce or terminate benefits, as applicable, as follows: Ten days advance notification shall be provided to households that are to receive a reduction or termination of benefits, prior to the actual reduction or termination. The first day of the 10 day advance notice period shall be the day the notice is sent. The notice shall advise the household of:

(1) The change; (2) the reasons for the change; (3) notification of the right to appeal and when the appeal must be filed to ensure continued benefits while awaiting a hearing and decision; (4) instructions on how to appeal; and (5) the right to reapply at any time during the school year. The reasons for ineligibility shall be properly documented and retained on file at the School Food Authority.

(Sec. 803, Pub. L. 97-35, 95 Stat. 521-535 (42 U.S.C. 1758))

[48 FR 12510, Mar. 25, 1983, as amended at 49 FR 26034, June 26, 1984; 52 FR 19275, May 22, 1987; 55 FR 19240, May 9, 1990; 56 FR 32950, July 17, 1991; 56 FR 33861, July 24, 1991; 64 FR 50744, Sept. 20, 1999; 64 FR 72474, Dec. 28, 1999; 66 FR 48328, Sept. 20, 2001; 68 FR 53489, Sept. 11, 2003]

§ 245.7 Hearing procedure for families and School Food Authorities.

(a) Each School Food Authority of a school participating in the National School Lunch Program, School Breakfast Program or the Special Milk Program or of a commodity only school

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shall establish a hearing procedure under which:

(1) A family can appeal from a decision made by the School Food Authority with respect to an application the family has made for free or reduced price meals or for free milk, and (2) the School Food Authority can challenge the continued eligibility of any child for a free or reduced price meal or for free milk. The hearing procedure shall provide for both the family and the School Food Authority:

(i) A simple, publicly announced method to make an oral or written request for a hearing;

(ii) An opportunity to be assisted or represented by an attorney or other person;

(iii) An opportunity to examine, prior to and during the hearing, any documents and records presented to support the decision under appeal;

(iv) That the hearing shall be held with reasonable promptness and convenience, and that adequate notice shall be given as to the time and place of the hearing;

(v) An opportunity to present oral or documentary evidence and arguments supporting a position without undue interference;

(vi) An opportunity to question or refute any testimony or other evidence and to confront and cross-examine any adverse witnesses;

(vii) That the hearing shall be conducted and the decision made by a hearing official who did not participate in making the decision under appeal or in any previously held conference;

(viii) That the decision of the hearing official shall be based on the oral and documentary evidence presented at the hearing and made a part of the hearing record;

(ix) That the parties concerned and any designated representative shall be notified in writing of the decision of the hearing official;

(x) That a written record shall be prepared with respect to each hearing, which shall include the challenge or the decision under appeal, any documentary evidence and a summary of any oral testimony presented at the hearing, the decision of the hearing official, including the reasons therefor, and a copy of the notification to the

parties concerned of the decision of the hearing official; and

(xi) That the written record of each hearing shall be preserved for a period of 3 years and shall be available for examination by the parties concerned or their representatives at any reasonable time and place during that period.

(b) *Continuation of benefits.* When a household disagrees with an adverse action which affects its benefits and requests a fair hearing, benefits shall be continued as follows while the household awaits the hearing and decision:

(1) Households that have been approved for benefits and that are subject to a reduction or termination of benefits later in the same school year shall receive continued benefits if they appeal the adverse action within the 10 day advance notice period; and

(2) Households that are denied benefits upon application shall not receive benefits.

(44 U.S.C. 3506; sec. 803, Pub. L. 97-35, 95 Stat. 521-535 (42 U.S.C. 1758))

[Amdt. 6, 39 FR 30339, Aug. 22, 1974, as amended at 47 FR 746, Jan. 7, 1982; 48 FR 12511, Mar. 25, 1983]

§ 245.8 Nondiscrimination practices for children eligible to receive free and reduced price meals and free milk.

School Food Authorities of schools participating in the National School Lunch Program, School Breakfast Program or Special Milk Program or of commodity only schools shall take all actions that are necessary to insure compliance with the following nondiscrimination practices for children eligible to receive free and reduced price meals or free milk:

(a) The names of the children shall not be published, posted or announced in any manner;

(b) There shall be no overt identification of any of the children by the use of special tokens or tickets or by any other means;

(c) The children shall not be required to work for their meals or milk;

(d) The children shall not be required to use a separate dining area, go through a separate serving line, enter the dining area through a separate entrance or consume their meals or milk at a different time;